

Message

From: Connors, Sandra [Connors.Sandra@epa.gov]
Sent: 1/19/2021 2:22:30 PM
To: Frace, Sheila [Frace.Sheila@epa.gov]
CC: Goodin, John [Goodin.John@epa.gov]; Weiler, Katherine [Weiler.Katherine@epa.gov]
Subject: FW: For Your Review: ACTION due noon Friday, January 15, 2021: Compiling policies for the elevation of disputes between EPA and State/Tribes
Attachments: 233_50.docx; Programmatic Agreement - 12-16-20.pdf; FL404BiOp_Final_Signed.pdf; EPA-FL MOU.pdf

Sheila – Per our conversation, attached and noted below are the only two elevation procedures our Divisions identified that may be relevant for this exercise. We have listed the staff level POC, but if you are interested in a management POC, please use me.

Please let me know if you have any questions.

CWA 404 (Kathy Hurlid is the Clean Water Act 404(g) – U.S. EPA Lead)

1. The regulations at 40 CFR 233.50 have an oversight process that lays out procedures for states, tribe, or other interested person who may disagree with EPA's comments, objection or conditions on a permit may seek a hearing. (attached word document)
2. As part of Florida's recent assumption of the CWA 404 dredged and fill permitting program, EPA has approved elevation procedures with respect to state of Florida Clean Water Act 404 permits where they may adversely effect threatened or endangered species or Historic Properties. These elevation procedures can be found in the EPA-FDEP MOA (Part II, Section D), the Programmatic Agreement under the National Historic Preservation Act (and associated Operating Agreement) (pages 4 and 6), and the Biological Opinion issued by the USFWS under ESA (pages 29 and 30). (Attached PDFs)

Deepwater Horizon (Treda Grayson - NRDA Program Manager)

DWH NRDA Federal Trustees MOU

The DWH NRDA Federal Trustees (DOI, EPA, NOAA, and USDA) entered into this MOU to promote coordination and cooperation among the Federal Trustees in the restoration of natural resources injured by the *Deepwater Horizon Oil Spill*. Section 7 (pg 4) of the MOU contains an elevation process for instances when disputes arise.

DWH NRDA Trustee Council MOU (dispute resolution process)

Similar to the Federal Trustees MOU, all DWH NRDA Trustees which comprise the Trustee Council (4 Federal Trustees and 5 Gulf States) entered into a MOU to promote coordination and cooperation among all Trustees in the restoration of natural resources injured by the *Deepwater Horizon Oil Spill*. Section D (page 8) of the MOU contains the dispute resolution process.

Thanks,

Sandra

Sandra L. Connors
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From: Frace, Sheila

Sent: Wednesday, December 23, 2020 12:23 PM

To: OW Office Directors <OWOfficeDirectors@epa.gov>; OW Deputy Office Directors <OWDeputyOfficeDirectors@epa.gov>

Cc: Sylvester, Francis <Sylvester.Francis@epa.gov>; Nguyen, Amelia <nguyen.amelia@epa.gov>; Tiago, Joseph <Tiago.Joseph@epa.gov>; Weyer, Erica <weyer.eric@epa.gov>; Weiler, Katherine <Weiler.Katherine@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>

Subject: ACTION due noon Friday, January 22, 2021: Compiling policies for the elevation of disputes between EPA and State/Tribes

Background:

Over the last year, a workgroup comprised of region and headquarters representatives have been working to draft an elevation policy that can be used in the absence of previously established and agreed to elevation policies between EPA and States/Tribes. I am attaching a version that currently is being vetted with OA sponsors, FYI only. I am not convinced this will meet expectations any more than the earlier version I shared with you in May. (Subsequent to sharing that version with Senior Leadership, the Workgroup was sent back to the drawing board.)

In drafting this elevation policy, we were acutely aware that there are already multiple elevation policies throughout the agency. In order to avoid confusion of when this policy can be used, the Workgroup has reached out through the lead region coordinators to try to obtain a better sense of the universe of current and active elevation processes maintained by the Regions. I am working with Miriam to help compile those programmatic-level elevation policies maintained by Office of Water.

We recognize that there may also be less formal elevation processes and we are trying to also ensure we take those into consideration as well. Ultimately, we are planning to compile a compendium of the various elevation policies within the elevation policy being drafted.

Ask: By noon Friday, January 22, 2021, please provide (to me) any current processes for elevation of disagreements with State/Tribal leaders. We are looking for currently used elevation processes (e.g. as documented in elevation memorandums of understanding, policies, guidance, etc.).

- For each elevation process, please provide the following:
 - o The entire document where the elevation policy is embedded (e.g., pdf or word document, and link if applicable)
 - o The citation for the document outlined exactly where in the document the elevation policy is located (e.g., page number, paragraph number, etc.)
 - o Point of Contact (e.g., both name and position title)

If your Office has less formal elevation processes (those that are not specifically in policies, guidance, MOUs, etc.), please provide as much of the details available for those as well. We are interested in further discussing these processes for potential inclusion.

If you have any questions please let me know.

Thank you,

Sheila

Sheila E. Frace
Office of Water
202-564-1153